

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY eg D.C.
05 OCT 17 PM 2:55

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENNESSEE

GORDON NEWSOME, et al.,

Plaintiffs,

v.

No. 04-2752 B

PRIMERICA LIFE INSURANCE CO.
and STEVE A. STOKES,

Defendants.

ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED

This lawsuit was initially brought by the Plaintiffs, Gordon Newsome, Gavin Newsome, Charissa Newsome and Destiny Newsome, minors, by Hazel Thompson as guardian and next friend, in the Circuit Court of Tennessee on August 18, 2004, alleging breach of a life insurance contract. The matter was removed to this Court on September 23, 2004. On August 26, 2005, the Defendants, Primerica Life Insurance Co. and Steve A. Stokes, moved for dismissal of the Plaintiffs' complaint for failure to comply with orders of the Court and for failure to prosecute, pursuant to Rules 37 and 41, respectively, of the Federal Rules of Civil Procedure. The motion was referred to the magistrate judge for report and recommendation and/or determination.

On September 30, 2005, a report and recommendation was issued by Magistrate Judge Diane Vescovo in which she outlined a pattern of failures on the part of the Plaintiffs to comply with the directives of this Court, respond to motions, and otherwise move this case forward. It was recommended that

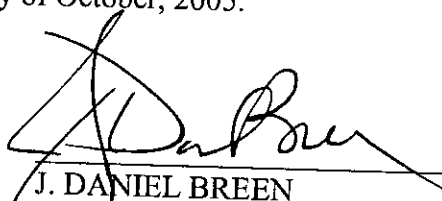
the plaintiffs' claims be dismissed without prejudice under Rule 41(b). It is recommended that the dismissal be without prejudice because this [is] a claim by

minors. It should be noted that Hazel B. Thompson is proceeding pro se at this time but she cannot represent the minors in a pro se capacity. In the alternative, it is recommended that the plaintiffs be ordered to appear before Judge Breen and show cause why this case should not be dismissed.

(Report and Recommendation on Def.'s Rule 37 Mot. to Dismiss as a Sanction for Failure to Resp. to Stokes' Pending Mot. to Dismiss and for Failure to Participate in Disc. at 5.) The Plaintiffs were advised that any objections or exceptions to the report must be filed within ten days of service thereof and that failure to do so "may constitute a waiver of objections, exceptions and further appeal." (Report and Recommendation on Def.'s Rule 37 Mot. to Dismiss as a Sanction for Failure to Resp. to Stokes' Pending Mot. to Dismiss and for Failure to Participate in Disc. at 5.) According to the Court's docket, no objections to the report and recommendation have been filed even though the time for such action has expired.

As a consequence, the Plaintiffs are hereby DIRECTED to show cause, within fifteen (15) days of the entry of this order, why this case should not be dismissed for failure to comply with Court orders and for failure to prosecute. The Plaintiffs are admonished that failure to respond within the time period allotted will result in dismissal of their complaint without prejudice.

IT IS SO ORDERED this/ 7th day of October, 2005.


J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 23 in case 2:04-CV-02752 was distributed by fax, mail, or direct printing on October 18, 2005 to the parties listed.

Thomas Lang Wiseman
WISEMAN BIGGS BRAY PLLC
1665 Bonnie Lane
Ste. 106
Memphis, TN 38016

Jimmy Moore
CIRCUIT COURT, 30TH JUDICIAL DISTRICT
140 Adams Ave.
Rm. 224
Memphis, TN 38103

Hazel D. Thompson
4020 Pattye Ann Dr.
Memphis, TN 38116

Honorable J. Breen
US DISTRICT COURT